

Of course you can still turn back! On the revocability of the Article 50 notification and post-truth politics

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The British Prime Minister Theresa May has announced yesterday the intention to call a 'snap' general election to be held on the 8th of June 2017. The announcement has caught everyone, and I really mean everyone, off-guard. Not only because it represents a radical U-turn from the PM's own professed [stance](#) since taking up the post eight months ago. There was also absolutely no whiff over the Easter weekend – to the point that even Conservative MPs have [manifested](#) their surprise upon the announcement. Analyses are pouring in as I write and so far two major 'camps' are emerging: one that highlights the smart political move by Theresa May, who is now set to cash in from the surge over Labour in polls of the last two months, and one that instead laments the 'cynical' move by yet another Conservative PM, who puts the interest of the party – and her own – before that of the country. This general election will be in fact likely one of the most polarised ever, with strong centrifugal forces pushing in Scotland and Northern Ireland, and at the centre of it there will be Brexit and the impending negotiations. This is crystal-clear from the PM's statement and all the major political party leaders, with the resounding [exception](#) of Jeremy Corbyn, have immediately followed suit in [couching](#) the upcoming vote in Brexit [terms](#).

Be that as it may (no pun intended), this short comment seeks to highlight one unacceptable contention by the Prime Minister in [announcing](#) the forthcoming general election:

We have also delivered on the mandate that we were handed by the referendum result. Britain is leaving the European Union and there can be no turning back. (emphasis added)

Later on, she stressed the same point in an [interview](#) with ITV:

Well I think if people look at what I've done and what we've done in government since the referendum vote, since I took over as prime minister, we have provided stability and crucially we have rolled our sleeves up, we have got on with the job, we've said we are going to deliver on Brexit. We have taken that absolutely crucial first step, which is triggering article 50. There is no turning back now. The UK will be leaving the EU. (emphasis added)

To put it shortly, the PM is lying. For it is not true – '[post-true](#)'? – that 'there is no turning back now', both from the legal and political point of view. Legally speaking, the notification to trigger article 50 TFEU can be unilaterally withdrawn: besides [international law experts](#), Donald Tusk himself, once pressed on the point, has [stated unequivocally](#) that the UK government could withdraw its notification to leave the Union at any point before the end of the two-year period. And even if you are among those who believe that no unilateral withdrawal is possible there is no doubt that, as a matter of '[multilateral politics](#)', the UK and the EU-27 could reach an agreement to that end at any time during the negotiations. There is also no obstacle, in this respect, from the UK domestic constitutional arrangements.

Now, I am not suggesting in any way that this is what *should* happen. This is of course a purely political decision that the next British government will legitimately consider or not, in light of the results of the forthcoming elections. What I

do think though is that the PM's contention that 'there is no turning back' can or should be dismissed as mere 'political talk'. It is no 'white lie' either. It is instead a precise rhetorical device which, if accepted surreptitiously, dramatically constrains the [options available](#) to British voters in the elections. For if the argument is accepted that there is no turning back from Brexit, then the PM's request to the country to unify behind the government's plans for a 'hard Brexit' – putting an end to the opposition by other parties in the Commons and by 'unelected members' of the House of Lords – does strategically make sense. Either that or, as the PM [said](#), '[d]ivision in Westminster will risk our ability to make a success of Brexit and it will cause damaging uncertainty and instability to the country'. Here her reasoning is indeed valid: from the negotiation's success point of view, a disunited domestic front weakens considerably the government's bargaining position vis-à-vis the EU-27. And as we cannot go back to the notification of withdrawal, it is in the national interest – and thus in the voters' too – to strengthen behind the government to allow it to deliver 'the best possible deal', rather than having to fall back on the dreadful 'no deal' scenario. But again, this argument, which is the [only public argument](#) with which the PM has justified her astonishing U-turn on holding early elections before 2020, is based on a clearly false premise: that the Brexit process is now irreversible.

Is this yet another example of the '[post-truth](#)' age of politics we are currently living in?

By affirming that there is no turning back from Brexit (whilst knowing very well that there is), the PM is actually trying to make it the case: she is performatively using her normative authority to transform a (legitimate) political stance – that there *should* not be turning back from Brexit now – into an empirical fact – that *there is no* turning back. She is not just *saying* something, [she is doing something](#). And when this is done against a factual truth – that the UK government *can* legitimately halt the Brexit process at any point in time before the article 50 deadline, it constitutes an unacceptable operation in a democratic system. Such an operation obliterates the very idea of 'truthfulness' and seems to hinge on cognitive biases that sometimes even lead to reinforcing misperceptions *in spite* of fact-checking ('[backfire effect](#)'). And when it is conducted from a position of authority such as that of Prime Minister, one can only wonder the impact it will have in shaping the public narrative of the upcoming election.¹⁾ Anecdotal evidence seems already to confirm this, as I had several conversations with Remain voters who readily accept that 'there is no turning back from Brexit now'.

In other words, when political 'expediency' uncritically supersedes historical and scientific truths or factual accuracy, and no one over mainstream media seems to even blink an eye about it, any constitutional democracy is in real peril. The '[epistemic circumstances](#)' of democracy cannot be easily discounted without relinquishing the idea that the outcome of the democratic process will be 'the best possible'. It (most likely) won't. We have been witnessing this [in a number of occasions](#) over the last couple of years. And such a worry becomes even more pressing in the context of a democratic system where strong *formal* constitutional [limits](#) are missing.²⁾ That is, in a constitutional system like the British where practices crystallise in constitutional conventions as non-formal sources of the constitution, the behaviour of political actors should be scrutinised to even a greater extent than in other systems. The Brexit referendum should be a prime example of this [phenomenon](#): when one of the official campaigns is allowed to put forward blatantly misleading statements about Turkey's accession to the EU, or about the UK's contribution to the EU budget that could be redirected into the NHS – where, in one word, voters are utterly misled and this is not somehow officially sanctioned – the democratic legitimacy of the outcome can be reasonably [questioned](#).³⁾ It is important to note that the [Report](#) on the lessons learned from the EU Referendum, just published by the Public Administration and Constitutional Affairs Committee, criticise also the Civil Service for making some 'partisan' claims as part of their public information campaign leading to the vote (at 156).

This is possibly the biggest challenge for political theorists and philosophers nowadays: how to [defend](#) democratic processes in light of the utter disregard by many actors for the very epistemic circumstances – scientific method, historical accuracy, deductive and inductive logic, and so forth – that constitute them. On the ground, all those interested in defending democracy and its values should refuse to countenance the transformation of blatant lies into accepted public narratives that can shape the outcome of the elections. Let's begin with the idea that British voters cannot 'turn back' from Brexit. For a start, anyone with legal expertise – students, professors, lawyers, journalists, and every knowledgeable people – should explain to his or her friends, relatives, and colleagues why this is *not* the

case. Set the record straight, and from there discuss what the best option for the UK might be. I would argue there is a civic duty to do so.

References [+]

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